



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 11, 2003

Ms. Sally Pryor
Executive Director
Hearne Area Chamber of Commerce
304 South Market Street
Hearne, Texas 77859

OR2003-0927

Dear Ms. Pryor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176598.

The Hearne Area Chamber of Commerce (the "chamber") received a request for information relating to receipt and expenditure of hotel-motel tax funds from March, 2000 through the present, and for records of all revenues and expenditures made from March, 2000 through the present. You inform us that quarterly and yearly reports for all expenditures and revenues pertaining to the hotel-motel tax will be provided to the requestor. You assert, however, that the chamber's budget information is not public information subject to the Public Information Act (the "Act"). We have considered your claims and reviewed the submitted information. We have also reviewed the contract you submitted in response to our letter of January 30, 2003. *See* Gov't Code § 552.303(b), (c). Furthermore, we have considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We first consider whether the submitted information is subject to chapter 552 of the Government Code. Chapter 552 is only applicable to public information. *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, the Act applies to the records of a "governmental body."

Section 552.003(1)(A) of the Government Code defines “governmental body” as an entity that spends or is supported in whole or in part by public funds. “Public funds” means funds of the state or of a governmental subdivision of the state. Gov’t Code § 552.003(5).

When considering the scope of the definition of “governmental body” under the Act, this office has distinguished between private entities receiving public funds in exchange for specific, measurable services and entities receiving public funds as general support. For example, in Open Records Decision No. 602 (1992) this office examined the Dallas Museum of Art (the “DMA”), a private, nonprofit corporation under contract with the City of Dallas to care for and preserve the collection of art owned by the City of Dallas, and to maintain, operate, and manage an art museum. The contract required the City of Dallas to support the DMA by maintaining the museum building, paying for utility service, and providing funds for other costs of operating the museum. In that decision, this office noted that an entity receiving public funds is a governmental body under the Act unless its relationship with the governmental body imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Open Records Decision No. 602 (1992); *see also* Open Records Decision No. 228 (1979) (private, nonprofit corporation, with purpose of promoting the interests of the area, that received general support from City of Fort Worth was governmental body). The decision also noted that “the [City of Dallas] is receiving valuable services in exchange for its obligations, but, in our opinion, the very nature of the services the DMA provides to the [City of Dallas] cannot be known, specific, or measurable.” *Id.* Thus, this office determined that the City of Dallas provides general support of the DMA facilities and operation, making the DMA a governmental body under the Act, to the extent it receives public support. Therefore, the DMA’s records relating to the programs supported by public funds are subject to public disclosure. *Id.*

In the present case, you inform us that pursuant to a contract executed in January, 2001, the chamber serves as the tourism agent for the City of Hearne (the “city”). You have submitted a copy of the funding agreement between the city and the chamber for our review. The agreement authorizes the city to provide public funds to the chamber from revenues collected from the hotel/motel occupancy tax in consideration for the chamber’s “promotion of tourism and the convention and hotel industry through attracting, promoting, developing, presenting, producing, and encouraging visitor[s] and conventions to come to the community.” You also inform us that the chamber provides quarterly and yearly reports of hotel/motel tax revenues and expenditures to the city.

We find that the agreement here is substantially similar to a contract that was addressed by this office in Open Records Decision No. 621 (1993). This office concluded in that decision that the Arlington Chamber of Commerce was a governmental body to the extent it received support from another governmental body. *See id.* We note that, in this instance, the terms of the agreement do not contain any restrictions on the chamber’s use of the public funds it receives from the city. Furthermore, we find that the chamber’s obligation to promote

tourism and the convention and hotel industry in consideration of the public funds provided by the city requires the chamber to provide highly specialized, unique services that are difficult to value. Consequently, we determine that the relationship of the chamber to the city does not impose a specific and definite obligation on the chamber to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser. Thus, we determine that the chamber is a governmental body to the extent that it receives public funds from the city to perform tourism promotion activities on behalf of the city. *See* Open Records Decision No. 602 at 5 (1992). Information relating to the tourism promotion activities the chamber performs on behalf of the city is, therefore, subject to the Act.

You do not indicate the extent to which the submitted budget information relates to the chamber's promotion of tourism and the convention and hotel industry on behalf of the city. Nor do you raise any exceptions to required public disclosure under the Act. Therefore, we determine that to the extent the submitted information relates to the activities of the chamber supported by public funds, the information is public information under the Act and must be released to the requestor. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 176598

Enc: Submitted documents

c: Ms. Kathy Stracener
302 South Magnolia Street
Hearne, Texas 77859
(w/o enclosures)